

(1932) 07 BOM CK 0009
In the Bombay High Court
Case No : O.C.J. Suit No. 2638 of 1921

Yusuf Ismailbhoy Lalji

APPELLANT

Vs

Abdullabhoy Lalji

RESPONDENT

Date of Decision : 28-07-1932

Acts Referred:

Citation : (1933) 35 BOMLR 1158

Hon'ble Judges : Mirza, J

Bench : Single Bench

Judgement

Mirza, J.—The suit out of which the present proceedings have arisen is for the winding up of a partnership which was dissolved as far back as February 4, 1920. The partnership assets consist of certain salt-pans at Aden which yield an annual net profit to the parties of between four to five lacs of rupees. The parties are some of the original partners and the legal representatives of the remaining original partners who are dead. By a consent order dated August 7, 1924, defendants Nos. 2 and 10, as representing two different branches of the family to which the partners belong, were appointed joint receivers without security and without remuneration, and thus became liable under the provision of Rule 435 of the High Court Rules as such receivers to file their accounts annually in the office of the Commissioner for Taking Accounts. The receivers have continued the method of managing this partnership business which they found had existed before they took over charge as receivers and have in all filed from year to year eight annual accounts of their management as receivers. The Commissioner has from time to time passed these accounts under the provisions of Rule 436. It is alleged by defendant No. 9, but denied by the receivers, that on the occasion of the passing of the seventh or last but one account defendant No. 9 raised an objection to the form of the accounts as filed and the receivers then promised that in subsequent years they would adopt a different form which would satisfy defendant No. 9.

2. Defendant No. 9 filed certain objections and surcharges to the accounts of the

receivers which were filed before the Commissioner this year in respect of the eighth or last preceding year of their management, The Commissioner having disallowed defendant No. 9's objections and surcharges, defendant No. 9, thereupon, applied for and obtained a certificate from the Commissioner dated May 9, 1932, certifying that he had disallowed defendant No. 9's objections and surcharges and had passed the receivers' accounts. There is no provision in the High Court Rules which would enable the Commissioner to issue such a certificate and on that ground it has been urged on behalf of the receivers that the certificate is ultra vires. There is provision in the rules of the Supreme Court of England by which the Master is required to issue such a certificate. Under Order L, Rule 22, of the Supreme Court Rules it is provided that a certificate of the Master stating the result of a receiver's account shall from time to time be taken. An analogous provision in our rules would seem desirable, but its absence does not, in my opinion, debar the Commissioner from issuing such a certificate. Under Rule 436 the Commissioner is empowered, on the application of any of the parties interested, to report or certify to the Court any neglect on the part of a receiver which may have been proved. The object of the rules requiring a receiver to file his accounts before the Commissioner and empowering the Commissioner to pass the accounts after they are so filed, apparently is, unless otherwise ordered, to give a discharge to the receiver in respect of accounts which are passed so that they could be reopened only if it were subsequently shown that the receiver had been guilty of fraud or negligence which had escaped detection. For his protection the receiver should be entitled to have a certificate from the Commissioner to show that the accounts he was required to file were filed by him and were subsequently passed by the Commissioner. The omission of a rule from the Rule Book requiring the Commissioner to issue a certificate in respect of the passing by him of the receiver's accounts should be regarded, in my opinion, as an inadvertent omission. Such omission does not, in my opinion, take away from the Court the inherent jurisdiction it possesses to review the action of its officer, although, as in the present case, the officer has acted hot under the specific orders of a particular Court but under the High Court Rules by which certain powers are delegated to him. I am unable to agree with Mr. Billimoria's contention that under our Rules the filing and passing of accounts of a receiver before the Commissioner are merely nugatory acts which do not affect the rights of the parties to question the correctness of those accounts thereafter by means of an independent suit against the receiver personally, and the further contention he has advanced that these accounts after they are passed could be challenged only by means of a fresh suit and not by a review of the Commissioner's action in the suit in which the receiver is appointed. The Commissioner is an officer of the Court to whom certain powers are, for the sake of convenience, delegated by the Court under its rules. The Court is entitled, in my judgment, to exercise supervision over the Commissioner in respect of all such matters. If the receiver's accounts are passed by the Commissioner and no party challenges them within a reasonable time of their passing by the Commissioner, the accounts so passed, in my judgment, are on the footing of an

adjusted account and cannot be allowed to be reopened except for a just cause shown. The certificate issued by the Commissioner, in my judgment, is in order. I overrule the preliminary objection taken to it on behalf of the receivers.

3. A further preliminary objection taken on behalf of the receivers is that the present proceedings by way of exceptions to the Commissioner's certificate and by way of a chamber summons are both mis-conceived.

4. There is no provision in the High Court Rules for filing such exceptions and no provision of an analogous nature is to be found in the Rules of the Supreme Court. There is a precedent to which my attention has been called in Suit No. 1088 of 1912, where on the passing of a receiver's account by the Commissioner a certificate to that effect was obtained from him and parties had filed exceptions to the certificate on the analogy of exceptions to a report made by the Commissioner. The matter having come before Mr. Justice Rangnekar, an objection was taken on behalf of the receiver in that suit that the exceptions were misconceived. The learned Judge evidently overruled that objection, for he heard the exceptions, allowed one of the exceptions, and remanded the matter to the Commissioner on that exception, the consideration of the remaining exceptions being reserved. It is pointed out by Mr. Billimoria, the learned counsel for the receivers, that the analogy of a report made by the Commissioner in a suit referred to him under an order of the Court would not apply to a certificate issued by the Commissioner on passing a receiver's accounts, for the confirmation of the report in the one case would lead to a final decree which would bind the parties to the suit, the confirmation of the Commissioner's certificate in the other case would not lead to a decree between the parties to the suit but would amount only to a confirmation of the passing of the receiver's accounts-it may be after some amendment or variation. There is considerable force in this contention and it does seem to me to militate against the weight of the precedent which has been cited. It would not be desirable, in my opinion, to give the matter of a certificate by the Commissioner of having passed a receiver's accounts the same weight and importance which naturally attaches to a report of the Commissioner in respect of matters relating directly to the suit which is referred to him by an order of the Court. The practice in England under the Supreme Court Rules seems to me to be the proper one to follow in such cases. Under the Supreme Court Rules the passing of a receiver's accounts is a matter for a Judge's chamber and the party challenging the Master's certificate has to take out a chamber summons. In my opinion it would be desirable to have a similar rule introduced in our High Court Rules requiring an aggrieved party to take out a chamber summons within a specified time as in the Supreme Court Rules if he wishes to challenge the receiver's accounts after they are passed by the Commissioner. In my judgment, although there is no specific provision in the High Court Rules on this subject, it would nonetheless be open to an aggrieved party under the general rules governing such matters to take out a chamber summons as defendant No. 9 has done here.

5. I decide both the preliminary points against the receivers and the matter will now be proceeded with on the merits of the application.

6. THE judgment was affirmed by the appeal Court (Beaumont C.J. and Rangnekar J.) and the appeal (Appeal No. 46 of 1932) was dismissed on March 29, 1933.